

SUMMARY OF FINDINGS

Impact Fees

The 13 jurisdictions that levy transportation impact fees are Arlington, Texas; Atlanta, Georgia; Boise-Ada County, Idaho; Bozeman, Montana; Cary, North Carolina; Franklin, Tennessee; Leawood, Kansas; Orlando, Florida; Phoenix, Arizona; Portland, Oregon; Reno-Sparks, Nevada; San Diego, California; and West Valley, Utah. The majority of these jurisdictions use P.M. peak-hour trips generated by various types of land use as a basis for determining overall impact fee rates.

Excise Taxes

The three jurisdictions that levy transportation excise taxes are Boulder, Colorado; Lee's Summit, Missouri; and Overland Park, Kansas. Boulder's transportation excise tax for residential properties is a flat rate, while the rate for nonresidential properties is based on gross leasable square feet of floor area. Lee's Summit imposes an excise tax upon building contractors in the form of a license tax. The tax rate is multiplied by the P.M. peak-hour trip rate per residential unit; for nonresidential development, the rate is determined per 1,000 square feet of gross leasable floor area. In Overland Park, the tax rate is based on 14.5 cents per square foot of plat area.

Right-of-Way Exaction

In addition to its excise tax, Overland Park, Kansas, imposes a right-of-way exaction on properties abutting a thoroughfare where additional right-of-way dedication is needed.

Administration

Road financing, specifically impact fees and excise taxes, are administered in a variety of governmental departments, including Planning, Public Works, Engineering Services, Development Services, Permitting, Bureau of Buildings, Traffic and Transportation, and Licensing.

Eligible Projects

Eligible projects for expenditure of funds include typical road improvements, with some pedestrian improvements. Portland, Oregon, funds transit improvements, and Orlando, Florida, funds corridor studies with impact fees. Arlington, Texas, and Franklin, Tennessee, may use impact fees to hire professionals to update the impact fee plans.

Service Areas

Nine of the 16 jurisdictions that collect impact fees or excise taxes have one service district for fee collection and disbursement. Arlington, Texas, has 27 roadway benefit areas, and San Diego, California, has 48 benefit assessment/development impact fee areas.

Assessment Districts

A number of jurisdictions have both assessment districts and benefit zones. Boise/Ada County, Idaho, has four assessment districts and eight benefit zones. Orlando, Florida, has five assessment zones and three benefit areas. In Orlando, assessment zones at or near the downtown have lower rates to reflect increased multipurpose, linked, pedestrian, and/or transit trips.

Special Plan Areas

Orlando, Florida, has four special plan areas that are concentrations of specialized tourist-oriented retail uses where impact fees for retail devel-

opments smaller than 25,000 square feet are substantially reduced. City staff conducted traffic impact studies in three of the four areas and found significantly lower trip generation rates. In the fourth area, the Downtown Development Board hired a transportation planning consultant to affirm that the area had reduced trip generation rates.

Road Financing Methodology

Nine of the 16 jurisdictions with an impact fee system use a demand-driven fee system. A formula is used to calculate the impact fee:

$$\begin{aligned} & (\text{number of new trips generated}) \times (\text{average trip length}) \\ & \times (\text{the cost per trip based on cost to improve a mile of roadway}) \end{aligned}$$

Six of the jurisdictions with an impact fee system use an improvements-driven fee system. To arrive at the average cost of a trip, the following formula is typically applied:

$$(\text{the road improvement budget contained in the capital improvements program}) \div (\text{the trip generation rate for the proposed land use})$$

One jurisdiction uses a combination of the two systems.

Trip Length Data

Data on trip length is gathered through regional models, national studies, and, on occasion, local origin and destination studies. Overland Park, Kansas, is one of the few jurisdictions that has conducted its own trip length study.

Trip Generation Rates

All jurisdictions rely upon the Institute of Transportation Engineers' *Trip Generation: Trip Generation Rates, Plots, and Equations* (6th ed., 3 vols., 1997) (hereinafter referred to as ITE's *Trip Generation* manual) as the main source for trips generated by various land uses. About two-thirds of the jurisdictions use P.M. peak-hour trip generation rates, while one-third use average daily trip generation rates for calculating trip generation.

Point of Fee Collection

The majority of jurisdictions collect impact fees/excise taxes at building permit issuance; a few collect fees at the time of final platting.

Reduced Fee Rates

The majority of the jurisdictions collect fees at the maximum allowable rate; however, the Bozeman, Montana, fee is currently at 90 percent and the Franklin, Tennessee, fee is at 60 percent of the maximum. West Valley City, Utah, charges residential uses at 100 percent of the maximum and nonresidential uses at 25 percent.

Jurisdictions, on occasion, reduce fee calculations for nonresidential development. This is done because nonresidential development often generates additional revenues to the jurisdiction (in addition to property taxes), such as sales taxes. On other occasions, a jurisdiction may apply a fee that is less than the maximum because it finds that employing the impact fee calculations rigorously for some types of land uses would make the fee exorbitant.

Phasing of Fees

In Phoenix, Arizona, the financing rates for designated impact fee areas are initially set lower and rise to 100 percent over a few years. Some jurisdictions

have a graduated rate for the first few months that the impact fee is in effect. The Lee's Summit, Missouri, excise tax rate was at 50 percent for the first nine months; Boise/Ada County, Idaho, charged 75 percent of the maximum for the first 12 months, then went to 100 percent.

Fees by Land-Use Type

Impact fees and excise taxes charged to developers vary widely by land-use type. Fees for single-family homes range from \$268 in Leawood to \$4,461 in Boulder, Colorado, with many of the jurisdiction fees falling in a range between \$800 and \$2,000. Boise/Ada County, Idaho, differentiates between size of single-family housing, with different rates for houses smaller than 1,500 square feet. Commercial fees per 1,000 square feet of gross leasable floor area (for a 100,000 square-foot building), range from \$321 in West Valley City, Utah, (charged at 25 percent of rate) to \$7,736 in Phoenix, Arizona.

Fee Rate Changes

Fees and methodology must be updated annually in some jurisdictions, and every three to five years in others. Portland, Oregon, recalculates its fees each year based on the 10-year moving average percentage fluctuation of the Oregon Composite Construction Cost Index, with changes in rates limited to no more than 6 percent in any given year.

Fee Expenditure Deadlines

The amount of time jurisdictions have to spend impact fee funds before they must be refunded ranges from 5 to 10 years.

Individual Fee Computation

Most jurisdictions provide for individual computation of fees if applicants think that the trip generation rate schedule does not accurately reflect the traffic impacts of their proposed development. Applicants in Cary, North Carolina, for instance, may request individual traffic impact computations by paying the town to hire an independent contractor to assess the accuracy of the traffic impacts of the development. The difference in the amounts between the fee schedule and the individual assessment must be at least \$5,000 or 5 percent of the total fees due before the town will consider fee adjustments. In the Reno/Sparks, Nevada, metropolitan area, a \$500 application fee is used to cover the cost of reviewing individual computations.

Existing Development or Pending Projects

Excise taxes for existing residential development annexed into Boulder, Colorado, is prorated as follows: 1/26 of the applicable tax is waived for each full year the residence existed prior to July 17, 1988 (calculations are based on the date the dwelling received its certificate of occupancy). Portland, Oregon, does not levy a System Development Charge when a property's previous trip generation is within 15 percent of the projected trips for the new use. In the Reno/Sparks, Nevada, metropolitan area, projects that obtained building permits within 60 days of the ordinance's effective date were exempted from the impact fee.

Existing Development Agreements

When Orlando initially adopted their road impact fees, development agreements that included traffic mitigation provisions and were substantially consistent with the ordinance were considered sufficient settlement of the impact fee if the agreements were less than five years old.

Value of Construction Contribution

Cary, North Carolina, determines the value of construction improvements provided by developers based on cost estimates, using a bidding process to determine a low bid. The bidding process is overseen by the Town Engineer to ensure fairness.

Land Dedication Values

Orlando, Florida, calculates the value of right-of-way dedications at 120 percent of the appraised value of the Orange County, Florida, Property Appraiser's Office. Overland Park values right-of-way dedications based on the most recent appraisal by the Johnson County, Kansas, Appraiser's Office.

Right-of-Way Exaction

In addition to an impact fee or excise tax, some jurisdictions, impose a right-of-way exaction on properties abutting thoroughfares where additional right-of-way dedication is needed.

Extraordinary Impacts

In addition to impact fees, a number of jurisdictions require developers to provide an additional pro rata share for developments that are deemed to cause "extraordinary impacts." For example, the impact fees in Orlando, Florida, include assessments only for at-grade improvements. Grade-separated improvements are covered by an additional fee.

Landscaping and Public Art

Leawood, Kansas, has a policy ensuring that a certain percentage of an impact fee is dedicated to landscaping and public art.

Credits

Most jurisdictions give credits or offsets for developer-provided construction or dedications. Usually these credits remain with the owner of the land. In the Reno/Sparks, Nevada, metropolitan area, a "credit book" is used to track bankable vehicle miles traveled (not dollars, which lose value due to inflation) that may be transferred, loaned, or sold to developers for use within the service area.

Reductions or Exemptions

The use of reductions or exemptions varies widely. Jurisdictions offer reductions or exemptions for affordable housing (five jurisdictions), economic development (five jurisdictions), and transit (two jurisdictions). Leawood, Kansas, exempts church sanctuaries but not other church-related facilities. Atlanta, Georgia, and Portland, Oregon, give reductions in fees for development located near transit or developed as transit-oriented development. In Atlanta, before any exemptions may be granted, the city's chief financial officer must identify how the funds lost to exemptions will be recouped.

Affordable Housing Exemptions

Owner-occupied housing in Atlanta, Georgia, may receive a 100 percent exemption if the housing is affordable to families with incomes that are 1.5 times the median family income and a 50 percent exemption for housing that is priced at 1.5 to 2.5 times median family income. Rental units priced at 60 percent of the median fair market rent may receive a 100 percent exemption, while rental units that are priced at 60 to 80 percent of the median fair market rent may receive a 50 percent exemption. In Boulder,

Colorado, the excise tax does not apply to dwelling units that are permanently affordable. Orlando, Florida, grants exemptions for low-income, owner-occupied housing. Income limits for owner-occupied housing are the income limits for households earning up to a maximum of 80 percent of the area's median income based on family size. The exemption process is based on funding set aside by the city council. The program currently funds about 50 homes a year. Portland, Oregon, fully exempts rental housing if it is affordable to households earning 60 percent or less of the area's median income. Owner-occupied housing is fully exempt if it is affordable to families earning less than the median family income.

Economic Development Exemptions

Atlanta, Georgia, may grant a 100 percent exemption to economic development projects in housing, commercial, and industrial enterprise zones, in addition to exemptions for conversion of historic buildings. Boulder, Colorado, may grant a development excise tax credit or a waiver for a project if it finds that the project serves a general public need or promotes development in an urban renewal area. Orlando, Florida, does not exempt economic development projects per se, but the city has paid the impact fee for economic development projects it thought good for the city's economic vitality. It has also offered in-kind services to economic development projects, such as funding traffic impact studies to demonstrate that the impacts would be lower than the impact fee schedule indicated.

Transit-Oriented Development Credits or Reductions

Portland, Oregon, provides System Development Charge (SDC) credits for transit-oriented development (TOD). Portland defines TOD as 40 units per net acre or a floor area ratio of 2 to 1 in the Central City Plan (CCP) area and 30 units per net acre located no more than a 1,000 feet from a light rail line outside the CCP area. For transit-oriented development in the CCP area, developers are liable for 10 percent of the vehicle SDC and 90 percent of the transit or nonmotorized SDC. In the area outside the CCP area, TOD developers are liable for 50 percent of the vehicle SDC and 90 percent of the transit or nonmotorized SDC. Atlanta, Georgia, reduces impact fees 50 percent for projects located within 1,000 feet of a MARTA transit station.

Appeals

In a majority of jurisdictions, impact fee or excise tax appeals are heard directly by the governing body, but not in all cases. Appeals in Bozeman, Montana, are made to the Development Impact Fees Review Committee, with final appeal to the city commission. Portland, Oregon, has a Code Officer that hears appeals. The Reno/Sparks, Nevada, Regional Transportation Commission (RTC) has empowered its Impact Fee Technical Committee to hear impact fee appeals. In West Valley City, Utah, appeals related to the impact fee ordinance are heard by the Impact Fee Administrator and, if not resolved, may be appealed to the Board of Adjustments.

Advisory Boards

Some jurisdictions have impact fee advisory committees. Bozeman, Montana, has a Development Impact Fees Review Committee comprised of the Impact Fee Coordinator, the Building Official, Director of Public Service, the Fire Chief, and the Director of the City-County Planning Office. Boise/Ada County, Idaho, has a Citizen's Advisory Committee made up of at least five members, two of which must be from the devel-

opment or real estate industry. The committee provides input on the land-use assumptions within the capital improvements program (CIP), monitors the implementation of the CIP, and files annual reports on the overall performance of the CIP, impact fee administration, and the need for impact fee updates. Lee's Summit, Missouri, has a License Tax Review Committee comprised of the Public Works Committee Chair, two citizens, a local developer, and one city staff appointee. The Reno/Sparks, Nevada, Regional Transportation Commission (RTC) has an Impact Fee Technical Committee comprised of the Community Development Director for Reno, the Director of the Washoe County Department of Comprehensive Planning, the Planning Director from the City of Sparks, the Public Works Directors and Engineers from participating local governments, and two RTC staff members.

Annual Report

Most jurisdictions require an annual report on their road financing program. Leawood, Kansas, requires the annual report to include the amount of fees collected and dispersed, improvements completed in the past year and those planned for the succeeding year, a summary of development activity in the impact area, and any recommended changes to the program, Master Street Plan, or intensity of uses in the area. Phoenix, Arizona, requires that the annual report be reviewed by an outside consultant.

Legal Challenges

Legal challenges to impact fees or excise taxes have not been numerous. The cities of Leawood and Overland Park, Kansas, successfully defended major legal challenges. Orlando, Florida, was unsuccessfully sued over how credits were being handled. A legal challenge to the constitutionality of impact fees in Boise/Ada County, Idaho, was also unsuccessful. San Diego, California, actually sued itself to affirm that their Facilities Benefit Assessments Ordinance was "suit proof."

Two legal challenges to impact fees in the surveyed communities are pending. One is a suit filed against Bozeman, Montana, challenging impact fees as a takings. The other is in Atlanta, Georgia, where the Southeastern Legal Foundation, a public interest law firm, has stated it will file a legal challenge to Atlanta's single service district impact fee ordinance during the summer of 2000.